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Marcia M. Waldron
Clerk

UNITED STATES COURT OF APPEALS

FOR THE THIRD CIRCUIT
21400 United States Courthouse
601 Market Street
Philadelphia PA 19106-1790

Telephone
267-299-4932

pacer.ca3.uscourts.gov

MARCH 5 2002

Ms. Mary E. D'Andrea, Clerk
U.S. Dist. Crt.
Middle Dist. Of PA.
228 Walnut St., Rm. 1060
Harrisburg, PA 17108

RECEIVED
HARRISBURG, PA

RE: Docket No. 01-2992
Marshall vs. Raiger
D. C. CIV. No. 01-cv-00949

MAR 08 2002
MARY E. O'ANDREA, CLERK
Per J/S

Dear Mrs. D'Andrea:

Enclosed is a certified copy of the judgment order in the above-entitled case(s). The certified judgment order is issued in lieu of a formal mandate and is to be treated in all respects as a mandate.

- (X) We return herewith the certified record in the case(s).
() We release herewith the certified list in lieu of the record.

Kindly acknowledge receipt for same on the enclosed copy of this letter.

Counsel are advised of the issuance of the mandate by copy of this letter. A copy of the certified judgment order is also enclosed showing costs taxed, if any.

Very truly yours,
MARCIA M. WALDRON
Clerk

Kathy Brouwer
By: Kathy Brouwer
Case Manager

Enclosure

cc:

William Donald Marshall
David J. Arnold Jr., Esq.

ackn'd 3/8/02

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DPS-21

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

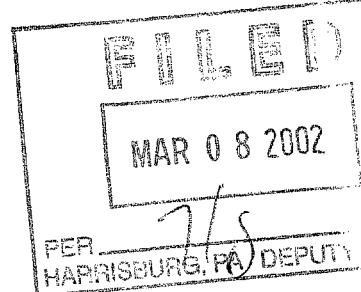
NO. 01-2992

WILLIAM DONALD MARSHALL,

Appellant

v.

ROBERT L. RAIGER, Warden;
DA OF LEBANON COUNTY



On Appeal From the United States District Court
For the Middle District of Pennsylvania
(D.C. Civil No. 01-cv-00949)
District Judge: Honorable Sylvia H. Rambo

Submitted For Possible Summary Action Under Third Circuit LAR 27.4 and I.O.P. 10.6
October 25, 2001

Before: NYGAARD, ROTH AND BARRY, CIRCUIT JUDGES

JUDGMENT

This cause came on to be heard on the record from the United States District Court
for the Middle District of Pennsylvania and was submitted pursuant to Third Circuit LAR
27.4 and I.O.P. 10.6. On consideration whereof, it is now here ORDERED AND

ADJUDGED by this court that the judgment of the District Court entered July 19, 2001, be and the same is hereby affirmed. All of the above in accordance with the opinion of this Court.

ATTEST:

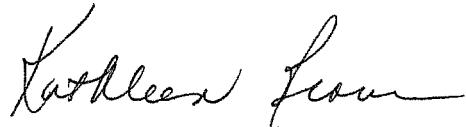


Clerk

DATED: February 8, 2002

Certified as a true copy and issued in lieu
of a formal mandate on March 5, 2002.

Teste:



Clerk, United States Court of Appeals
for the Third Circuit

DPS-21

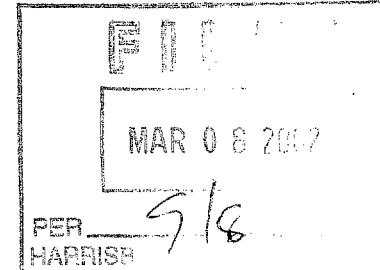
UNREPORTED- NOT PRECEDENTIAL

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(Filed: February 8, 2002)

OPINION

PER CURIAM

William Donald Marshall, a pre-trial detainee, appeals the District Court's order dismissing his petition for writ of habeas corpus without prejudice for failure to exhaust

state court remedies. He has also filed a "Petition For Issuance Of A Habeas Corpus Ad Testificandum For Return Of Appellant." We will affirm the District Court's order and deny the motion.

Marshall was taken into custody by the Commonwealth of Pennsylvania on May 8, 2001 pursuant to an Arrest prior to Requisition (Fugitive) Warrant issued by the Pennsylvania State Police based upon a Larceny Warrant lodged against him by the Commonwealth of Virginia. A hearing to determine whether Marshall would be extradited to Virginia was originally scheduled for June 4, 2001, and subsequently continued. According to Marshall, he was extradited to Virginia on October 2, 2001, after a hearing held on September 25, 2001.

Marshall filed the present petition for writ of habeas corpus on May 18, 2001, claiming that he is being held in custody in violation of his federal and state statutory and constitutional rights. Although he does not specify whether the petition was filed pursuant to 28 U.S.C. § 2241 or 28 U.S.C. § 2254, he is a pre-trial detainee. A federal court's jurisdiction to issue a writ before a state court judgment has been rendered exists under § 2241.¹ Marshall has the burden of proving that he has exhausted the remedies available to him in Pennsylvania courts. See Toulson v. Beyer, 987 F.2d 984, 987 (3d Cir. 1993); Moore v. DeYoung, 515 F.2d 437, 443 (3d Cir. 1975). We agree with the

¹For practical purposes, this question is immaterial; regardless of whether a petition is filed pursuant to § 2241 or § 2254, exhaustion of state court remedies is required. See Moore v. DeYoung, 515 F.2d 437, 441-42 (3d Cir. 1975).

District Court that he has not done so. The “Petition For Issuance Of A Habeas Corpus Ad Testificandum For Return Of Appellant” is denied. See, e.g., Hammer v. Meachum, 691 F.2d 958, 961 (10th Cir. 1982) (per curiam); Schultz v. United States, 373 F.2d 524 (5th Cir. 1967) (per curiam); Ex parte Catanzaro, 138 F.2d 100, 101 (3d Cir. 1943).

To the extent the detention of which Marshall complains “arises out of process issued by a State court[,]” 28 U.S.C. § 2253(c)(1)(A), and a certificate of appealability is required for this appeal to proceed, we decline to grant one. Marshall has not shown that “jurists of reason would find it debatable whether the district court was correct in its procedural ruling.” Slack v. McDaniel, 529 U.S. 473, 484 (2000).

For the foregoing reasons, we will affirm.